



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02486/2019

THE IMMIGRATION ACTS

Heard at Glasgow
On 6 September 2019

Decision & Reasons Promulgated
On 25 September 2019

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

EN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Forrest, instructed by McGlashan MacKay Solicitors

For the Respondent: Mr M Clark, Senior Presenting Officer

DECISION AND REASONS

I make an order for anonymity pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting disclosure of any matter that may lead to the identification of the appellants and other parties to these proceedings. Any breach may lead to contempt proceedings.

1. The appellant will be referred to as EN in this decision and his wife as KN.

2. This is an appeal by a national of Azerbaijan (where he was born in 1989) against the decision of First-tier Tribunal Judge A Green. For reasons given in his decision dated 3 May 2019 the judge dismissed the appellant's appeal against the Secretary of State's decision dated 7 March 2019 refusing his protection claim which had been based on political opinion and his Christianity. The appellant had also contended that his removal would breach his rights under the Human Rights Convention, Articles 2, 3 and 8. The appellant's wife and son are dependents on his claim.
3. The political opinion claim is based on membership of the Azerbaijani Popular Front (APF) which had led to the appellant's detention and ill-treatment by the authorities on a date in October 2017; the precise day not having been given in evidence, and on 1 and 14 or 15 April 2018, the third occasion being when the appellant contends he was ill-treated. The appellant had applied for a visit visa to the United Kingdom on 29 June 2018. He left on his own passport on the grant of that visa and arrived in the United Kingdom on 24 August 2018. The Secretary of State did not accept that the appellant was a "genuine member" of the APF nor was it accepted that he had been arrested and detained as claimed. His faith was accepted however but here too the Secretary of State did not accept that the appellant had ever been persecuted as a consequence in the light of the religious mix in Azerbaijan.
4. Judge Green considered the appellant's credibility lay at the heart of the protection claim. This aspect was considered in detail in his decision between [19] and [32]. He accepted the appellant had established that he was a member of the APF which he had joined on 11 February 2014. He also accepted the appellant had been questioned about his party membership by the police as well as the account that the appellant had been detained on a second occasion claimed in April 2018 which coincided with the Presidential elections. As to the third occasion on 15 April 2018, the judge accepted the appellant's account of having been injured but that he had not established who had caused those injuries, as explained in [26] of his decision as follows:

"26. I am prepared to accept the Appellant's evidence that he was injured. However, for the reasons given below, he has not established who caused those injuries. I accept that KN clearly saw that his head was injured when he came home. Whilst the hospital certificate does not refer to the Appellant's blood pressure or that he was vomiting, it does note that he was examined in the emergency department and it was clear that he had brain concussion. He had tissue injuries and bruises. It also confirms that he was in hospital for two days. I accept KN's explanation about high blood pressure and vomiting. It is plausible that these were not observed in hospital but could have occurred when he was at home. The Respondent has submitted that the Appellant's evidence should not be accepted because he has not provided an expert medical report on his injuries. If, as claimed, the Appellant suffered soft tissue injuries just over a year ago, I fail to see what such a report could achieve. His wounds would have healed and may well not have resulted in scarring. What I do have is the benefit of KN's contemporaneous evidence of his injuries which I give weight."

5. Thereafter the judge gave detailed reasons why the appellant had failed to establish he was of adverse interest to the authorities leading to his claimed third arrest as follows:

“27. I do not accept that the Appellant has established that he was of adverse interest to the Azerbaijani authorities leading to his claimed third arrest and which places him at risk if he returns to Azerbaijan for the following reasons:

- a. KN claims in her statement that the Appellant was arrested. How could she know that if the Appellant, as he claims, was telephoned and told to attend the Baku police station? She did not see him being arrested. One can only assume that she is relying on hearsay.
- b. He has not provided objective evidence of the rally that he claimed to have attended on 14 April 2018. Given the interest that the international media and human rights organisations are taking in Azerbaijan, I think he could reasonably be expected to have been able to produce publicly available evidence of the rally. I acknowledge that the Appellant has provided background evidence in generic terms highlighting the oppressive nature of the regime, but he could have provided further evidence of the demonstration on 14 April 2018.
- c. If he was detained for 7 days and beaten before being released, I struggle to understand why he chose to remain in Azerbaijan until 24 August 2018. By his account this was a severe attack and yet he stayed in that country for another four months. A person in genuine fear of their life would not have done that. They would have realised that their life was in danger and would have left as soon as possible.
- d. He has provided contradictory evidence of his actions after being released from custody and prior to leaving in Azerbaijan. In paragraph 12 of his witness statement he says that throughout that period, he kept a low profile and stopped going to party meetings. He did not participate in any demonstrations. He claims to have gone out as little as possible. When he was cross examined, he was asked if he engaged in any political activity after his third arrest. He told Mr Wright that he attended meetings and prepared placards. He said that he posted pictures of political prisoners at underground stations. When challenged about the obvious contradiction between what he had said in his witness statement and what he said under cross examination, he simply blamed the interpreter. However, his witness statement was clear, and it confirms that it was read over to him. He signed it and adopted it as true. One must assume in the absence of any corrections, he understood what he had said in his statement and accepted it was true otherwise he would not have signed it and he would not have adopted it. It was taken as read and stood as his evidence in chief. Furthermore, I do not accept that putting up political posters in underground stations can be described as keeping a low profile. He would have put himself at risk by such behaviour in a public place. This contradiction significantly damages his credibility.

- e. He obtained a 6 month visit visa and travelled freely from Azerbaijan through an airport without any difficulty. If, as he claims, he was of adverse interest to the authorities, he would have encountered problems when exiting the country. This is not the behaviour of a person who claims to have been persecuted and fears he will suffer further mistreatment.
- f. If the Appellant was such a committed political activist, as he claims, and was prepared to put his and his family's safety at risk, I find it surprising that he has not engaged in any sur place activity in this country. His evidence on this was clear. He says he has not engaged in any political activity since coming to this country. In paragraph 15 of his witness statement, he claims that he did not want to put his family at risk in Azerbaijan. That contradicts his position in his oral evidence that he continued to be politically active after he was last released. If what he says is true, he would have put his family at risk and he would have stopped his political activism after his release.
- g. The Appellant has produced official documents purporting, amongst other things, to be summonses. The objective evidence produced by the Respondent indicates that fake official documents such as the type produced by the Appellant are readily available in Azerbaijan and I agree with the Respondent's analysis in paragraph 41 of the refusal letter. I give them little weight.
- h. The objective evidence produced by the Appellant does indeed show that there is widespread repression of political activists and journalists in Azerbaijan. However, this evidence focusses on high profile critics and activists, journalists and bloggers. The Appellant is not named in that material. At best he was a low-ranking party member with no evidence of blogging or other activities. He may have come to the authorities' notice prior to his claimed detention on 13 April 2018 but he was released and was able to freely leave Azerbaijan on his own passport without any problems. This suggests that he was no longer of any interest to the authorities."

6. As to the appellant's account of risk due to his religion after directing himself in relation to country guidance in *SL (Unmarried mother with mixed race child) Azerbaijan CG [2013] UKUT 46 (IAC)* the judge explained at [30]:

"30. In paragraph 17 of his witness statement, the Appellant admits that he did not convert to Christianity. He was brought up a Christian. He states that Christians may be discriminated against without providing evidence of his own personal experience. I would also comment that discrimination does not amount to persecution. As for his claim that his faith makes him more likely that he would be targeted for his political beliefs, this cannot succeed because I do not accept that he has any grounds for claiming asylum because of his political opinion. The objective evidence produced indicates that religious activists are detained. However, the Appellant has not claimed that he is a religious activist. I also note that the Azerbaijan constitution allows religious freedom."

7. Finally, the judge rejected the Article 8 claim on the basis that there were no exceptional circumstances that warranted his appeal being allowed outside the Immigration Rules. Specifically in respect of the appellant's child best interests, he observed in [32]:
- "32. ... Furthermore, it must be in the child's best interests to remain with their parents and to return to Azerbaijan as a family unit. The child is Azeri. He is young and can easily adapt to moving to Azerbaijan where he will enjoy the benefits of his citizenship of that country including education and healthcare. The decision is proportionate and in the public interest of maintaining effective immigration control."
8. Permission to appeal was granted by Judge Coker on the basis that it was arguable the judge had reached contradictory findings in the context of the evidence before him. Those "contradictions" are explained in the grounds of challenge on the sole ground in [3]:
- "3. The FTTIJ erred in law because it was not open to him – either generally or particularly to conclude that the appellant had not established that he was of adverse interest to the authorities in Azerbaijan ... "because ... "
9. The following points were made in support of those grounds in the application for permission to appeal:
- (i) Witness evidence. The fact that the appellant had been previously exposed to adverse attention indicated that he may be at a similar risk in the future unless there were good reasons why not. The judge had found the evidence of the appellant's wife was generally reliable; if the judge had meant to ascribe little weight to that evidence he should have said so.
 - (ii) The absence of objective evidence. It was accepted that there was evidence of widespread repression of political activists in Azerbaijan.
 - (iii) The conduct of the appellant. It was irrational to characterise the appellant's behaviour (after April 2018) as inconsistent with the fears of a genuine asylum seeker.
 - (iv) Political profile. There was an issue as to what constituted a low profile.
 - (v) Documentary evidence. The documentary evidence should have been considered in the round. If the judge did not accept the respondent's "submissions" in [40] it was irrational to have accepted them in [41].
10. A final ground was relied on in relation to the risk based on the appellant's religion; Mr Forest explained at the hearing that this ground was no longer relied on.
11. Mr Forest began his submissions with a summary that the challenge was a rationality challenge based on the judge having made findings that appear to be broadly favourable to the appellant in [20] to [24] of his decision and there was an absence of adequate reasoning for his ultimate conclusion having regard to those earlier findings. It had been accepted by the judge that the appellant was a member of the APF, that he had been detained by the police and that he had been injured. Mr

Forest clarified that the judge had not found the appellant had been detained on the second occasion in April 2018. It was instead the appellant's account that he had. Nevertheless, it had been accepted by the judge that the appellant had been injured on an occasion around that date.

12. Mr Forrest then made his detailed submissions on the above points advanced in the grounds of challenge. I take each in turn. The first is the witness evidence. The point had been made in the ground of challenge which was the rationality of the judge having decided that the evidence of the appellant was generally reliable.
13. In his decision at [21], the judge stated: "By way of general observation the appellant and his wife were generally reliable when they gave their evidence. They were not evasive and they did not have to be reminded to answer questions that they were asked."
14. Although the specific ground of challenge is confined to the observation that the evidence of KN was generally reliable, Mr Forrest submitted that this could be ascribed to the appellant also.
15. I accept Mr Clark's submissions by way of response that the point is taken out of context. The judge did not make a finding that the evidence was generally reliable without qualification. As will be seen from the passage set out above this observation was explained by reference to the manner in which they gave their evidence. To my mind it was open to the judge to begin his credibility analysis in this way. I am not satisfied that despite this observation the judge could be said to have been irrational in subsequently concluding that not all the evidence could be accepted.
16. Specifically with reference to KN, as will be seen from the passage cited above at [27(a)], it was open to the judge to observe that KN had not seen the appellant being arrested. Mr Forest is correct in his submission that hearsay evidence can be accepted in a tribunal. But here again I consider the ground takes the point out of context. In [27] the judge gave a number of reasons why he did not accept the appellant was of adverse interest to the authorities that had led to his claimed third arrest. This is just one of a number of reasons given. What the judge was saying was in effect that the weight which he gave to her evidence was affected by the absence of her having seen him being arrested. It will be seen that the judge accepted parts of KN's evidence particularly in relation to the injuries. This ground of challenge relates to a weight factor and in my judgment does not disclose error by the judge and cannot on any basis be considered indicative of irrationality.
17. The second point advanced relates to the absence of objective evidence. This is clarified in the grounds and was developed in submissions by Mr Forrest with reference to the judge having accepted that there was evidence of widespread oppression of political activists in Azerbaijan. In effect the ground ghosts a standard of proof challenge by reference to the judge having erred in instating on detailed or particular evidence of the event that the appellant claims to have attended. I am not satisfied this ground is made out for the following reasons.

18. First of all, the judge correctly directed himself as to the standard and burden of proof in this appeal. Secondly, the challenge takes the point out of context. As reminded by Mr Clark in his submissions, the judge gave a full explanation why he considered that it was reasonably open to the appellant to have provided evidence of the event that led to his claimed detention on the second date in April 2018. It cannot be said that the tribunal had insisted on provision of that evidence but instead observed that it was reasonably open to the appellant given the interest that the international media and human rights organisations were taking in Azerbaijan.
19. The third ground of challenge relates to the conduct of the appellant. The point is made in the grounds that the appellant had kept a low profile to protect his family. In the light of the earlier positive findings of credibility made by the judge between [23] and [26] it is argued that it was irrational to characterise his behaviour (in posting pictures of political prisoners on the underground) as being inconsistent with the fears of a genuine asylum seeker.
20. The matters that the judge had accepted included the fact of the appellant having been a member of the APF, a factor which I observed the respondent had not accepted for reasons given in [39] of the refusal letter. In relation to the adverse interest in the appellant the judge accepted in [25] the account that the appellant had been questioned by the authorities about his party membership. The judge found also that it was plausible that the appellant had been detained by the police in October 2017 which had coincided with the Presidential elections when he was warned not to participate in the elections or collaborate with other opposition parties. The judge accepted that the appellant had been detained in the morning and released later the same day at about 9pm or 10pm.
21. The contradiction (and not an inconsistency as wrongly asserted) identified by the judge did not however relate to these matters but instead to the appellant's account of his activities after the claimed third detention which it is to be remembered the judge had not accepted. This is explained by the judge in [27(d)] of his decision which I have set out above. In my judgment it was a contradiction correctly identified and one properly open to the judge on the evidence. It was an aspect that was relevant to the overall credibility finding.
22. The next ground of challenge relates to the issue of the appellant's political profile. Mr Forrest's submissions were essentially on the same point in respect the third ground above and answered in my judgment satisfactorily by the judge in [27(d)] of his decision. It was rationally open to the judge to observe that low political profile did not include activity of the kind of which the appellant gave evidence in cross-examination.
23. I turn now to the final limb of challenge relating to documentary evidence. This turns on the judge's rejection of the evidence by the appellant of the adverse interest in him as will be seen from [27(g)] above. The judge agreed with the conclusions of the Secretary of State in this regard. Mr Forest acknowledged that the appellant had not produced evidence by way of rebuttal to those reasonable concerns. I accept Mr

Clark's submission that the documents the judge had accepted in respect of the appellant's membership of the APF were of a different kind, and he did not himself seek to challenge the judge's conclusions on that despite the respondent's evidence relating to the cessation of the issue of membership cards.

24. By way of conclusion therefore I am not persuaded that the judge erred on the basis of the challenge on which permission has been granted. He undertook a careful credibility analysis in the course of which he explained the matters which he was able to accept and those which he rejected, giving adequate reasons for doing so. His conclusion that the appellant had not made out a sustainable claim was one rationally open to him on the evidence and for the reasons given. Accordingly this appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

Signed

Date 23 September 2019

UTJ Dawson

Upper Tribunal Judge Dawson